

1.366(c) with the maintenance fee payment, i.e., either the patent number or the application number is incorrect. See MPEP § 2515 and § 2530. A petition under 37 CFR 1.377 would not be appropriate where there is a complete failure to include at least one correct mandatory identifier as required by 37 CFR 1.366(c) for the patent since no evidence would be present as to the patent on which the maintenance fee was intended to be paid. If the maintenance fee payment with an incorrect mandatory identifier was made near the end of the grace period, the patent might expire since the Office would not credit the fee to the patent. A petition under 37 CFR 1.377 would not be appropriate where the patentee paid a maintenance fee on one patent when the patentee intended to pay the maintenance fee on a different patent but through error identified the wrong patent number and application number. Likewise, a petition under 37 CFR 1.377 would not be appropriate where the entire maintenance fee payment, including any necessary surcharge, was not filed prior to expiration of the patent.

Any petition filed under 37 CFR 1.377 must be filed within 2 months of the action complained of, or within such other time as may be set in the action complained of. The petition must be accompanied by the proper petition fee >(37 CFR 1.17(g))<. The petition may include a request that the petition fee be refunded if the refusal to accept and record the maintenance fee is determined to have resulted from an error by the Office.

Any petition filed under 37 CFR 1.377 must comply with the requirements of 37 CFR 1.181(b) and must be signed by an attorney or agent registered to practice before the Office, or by the patentee, the assignee, or other party in interest. A person or organization whose only responsibility insofar as the patent is concerned is the payment of a maintenance fee is not a party in interest for purposes 37 CFR 1.377. If the petition is signed by a person not registered to practice before the Office, the petition must indicate whether the person signing the petition is the patentee, assignee, or other party in interest. An assignee must comply with the requirements of 37 CFR 3.73(b) which is discussed in MPEP § 324.

Any petition under 37 CFR 1.377 should be marked on the front page of the communication to the attention of the Office of Petitions and addressed as follows:

Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

## 2590 Acceptance of Delayed Payment of Maintenance Fee in Expired Patent to Reinstate Patent [R-5]

*37 CFR 1.378. Acceptance of delayed payment of maintenance fee in expired patent to reinstate patent.*

(a) The Director may accept the payment of any maintenance fee due on a patent after expiration of the patent if, upon petition, the delay in payment of the maintenance fee is shown to the satisfaction of the Director to have been unavoidable (paragraph (b) of this section) or unintentional (paragraph (c) of this section) and if the surcharge required by § 1.20(i) is paid as a condition of accepting payment of the maintenance fee. If the Director accepts payment of the maintenance fee upon petition, the patent shall be considered as not having expired, but will be subject to the conditions set forth in 35 U.S.C. 41(c)(2).

(b) Any petition to accept an unavoidably delayed payment of a maintenance fee filed under paragraph (a) of this section must include:

- (1) the required maintenance fee set forth in § 1.20 (e)-(g);
- (2) the surcharge set forth in § 1.20(i)(1); and

(3) a showing that the delay was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and that the petition was filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent. The showing must enumerate the steps taken to ensure timely payment of the maintenance fee, the date and the manner in which patentee became aware of the expiration of the patent, and the steps taken to file the petition promptly.

(c) Any petition to accept an unintentionally delayed payment of a maintenance fee filed under paragraph (a) of this section must be filed within twenty-four months after the six-month grace period provided in § 1.362(e) and must include:

- (1) the required maintenance fee set forth in § 1.20 (e)-(g);

- (2) the surcharge set forth in § 1.20(i)(2); and

(3) a statement that the delay in payment of the maintenance fee was unintentional.

(d) Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest.

(e) \*\*\*Reconsideration of a decision refusing to accept a maintenance fee upon petition filed pursuant to paragraph (a) of this section may be obtained by filing a petition for reconsideration within two months of, or such other time as set in the decision refusing to accept the delayed payment of the maintenance fee. Any such petition for reconsideration must be accompanied by the petition fee set forth in § 1.17(f). After the decision on the petition for reconsideration, no further reconsideration or review of the matter will be undertaken by the Director. If the delayed payment

of the maintenance fee is not accepted, the maintenance fee and the surcharge set forth in § 1.20(i) will be refunded following the decision on the petition for reconsideration, or after the expiration of the time for filing such a petition for reconsideration, if none is filed. Any petition fee under this section will not be refunded unless the refusal to accept and record the maintenance fee is determined to result from an error by the Patent and Trademark Office.<

37 CFR 1.378(a) provides that the Director of the Office may accept the payment of any maintenance fee due on a patent based on an expiration of the patent if, upon petition, the delay in payment of the maintenance fee is shown to the satisfaction of the Director of the Office to have been unavoidable or unintentional. The appropriate surcharge set forth in § 1.20(i) must be paid as a condition of accepting payment of the maintenance fee. The surcharges set at 37 CFR 1.20(i) are established pursuant to 35 U.S.C. 41(c) and, therefore, are not subject to small entity provisions of 35 U.S.C. 41(h). No separate petition fee is required for this petition. If the Director of the Office accepts payment of the maintenance fee upon petition, the patent shall be considered as not having expired but will be subject to the intervening rights and provisions of 35 U.S.C. 41(c)(2).

Any petition under 37 CFR 1.378(b) or (c) should be marked on the front page of the communication to the attention of the Office of Petitions and addressed as follows:

Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

Any petition under 37 CFR 1.378 must be signed by an attorney or agent registered to practice before the U.S. Patent and Trademark Office, or by the patentee, the assignee, or other party in interest. A person or organization whose only responsibility insofar as the patent is concerned is the payment of a maintenance fee is not a party in interest for purposes of 37 CFR 1.378. If the petition is signed by a person not registered to practice before the Office, the petition must indicate that the person signing the petition is the patentee, assignee, or other party in interest. An assignee must comply with the requirements of 37 CFR 3.73(b) which is discussed in MPEP § 324.

37 CFR 1.378(e) provides a mechanism for obtaining reconsideration of a decision refusing to accept a

maintenance fee upon petition filed pursuant to paragraph (a). This mechanism is a petition for reconsideration which may be filed within 2 months of, or such other time as set in, the decision refusing to accept the delayed payment of the maintenance fee. In contrast to petitions filed under paragraph (a), the petition for reconsideration requires the petition fee set forth in 37 CFR 1.17(\*>f<). After a decision on the petition for reconsideration, no further reconsideration or review of the matter will be undertaken by the Director of the Office. The maintenance fee and the surcharge submitted will be refunded if the delayed payment of the maintenance fee is not accepted. The refund will be made following the decision on the petition for reconsideration, or after the expiration of the time for filing such a petition for reconsideration, if none is filed. The petition fee for filing a petition for reconsideration will not be refunded unless, on reconsideration, the refusal to accept and record the maintenance fee is determined to result from an error by the Office.

>

#### I. < UNAVOIDABLE DELAY

37 CFR 1.378(b) provides that a patent may be reinstated at any time following expiration of the patent for failure to timely pay a maintenance fee. A petition to accept late payment of a maintenance fee, where the delay was unavoidable, must include:

(A) the required maintenance fee set forth in 37 CFR 1.20(e)-(g);

(B) the surcharge set forth in 37 CFR 1.20(i)(1); and

(C) a showing that the delay was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and that the petition was filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent.

The required showing must enumerate the steps taken to ensure timely payment of the maintenance fee, the date and the manner in which patentee became aware of the expiration of the patent, and the steps taken to file the petition promptly. Furthermore, an adequate showing requires a statement by all persons with direct knowledge of the cause of the delay, setting forth the facts as they know them. Copies of all

documentary evidence referred to in a statement should be furnished as exhibits to the statement.

As language in 35 U.S.C. 41(c)(1) is identical to that in 35 U.S.C. 133 (i.e., “unavoidable” delay), a late maintenance fee for the unavoidable delay standard is considered under the same standard for reviving an abandoned application under 35 U.S.C. 133. See *Ray v. Lehman*, 55 F.3d 606, 608-09, 34 USPQ2d 1786, 1787 (Fed. Cir. 1995) (quoting *In re Patent No. 4,409,763*, 7 USPQ2d 1798, 1800 (Comm’r Pat. 1988), *aff’d sub nom. Rydeen v. Quigg*, 748 F. Supp. 900, 16 USPQ2d 1876 (D.D.C. 1990), *aff’d*, 937 F.2d 623 (Fed. Cir. 1991) (table), *cert. denied*, 502 U.S. 1075 (1992)). See MPEP § 711.03(c) for a general discussion of the “unavoidable” delay standard.

As 35 U.S.C. 41(c)(1) requires the payment of fees at specified intervals to maintain a patent in force, rather than some response to a specific action by the Office under 35 U.S.C. 133, a reasonably prudent person in the exercise of due care and diligence would have taken steps to ensure the timely payment of such maintenance fees. *Ray*, 55 F.3d at 609, 34 USPQ2d at 1788. That is, an adequate showing that the delay in payment of the maintenance fee at issue was “unavoidable” within the meaning of 35 U.S.C. 41(c) and 37 CFR 1.378(b)(3) requires a showing of the steps taken to ensure the timely payment of the maintenance fees for this patent. *Id.* Thus, where the record fails to disclose that the patentee took reasonable steps, or discloses that the patentee took no steps, to ensure timely payment of the maintenance fee, 35 U.S.C. 41(c) and 37 CFR 1.378(b)(3) preclude acceptance of the delayed payment of the maintenance fee under 37 CFR 1.378(b).

In view of the requirement to enumerate the steps taken to ensure timely payment of the maintenance fee, the patentee’s lack of knowledge of the need to pay the maintenance fee and the failure to receive the Maintenance Fee Reminder do not constitute unavoidable delay. See *Patent No. 4,409,763*, *supra*. See also Final Rule entitled “Final Rules for Patent Maintenance Fees,” published in the *Federal Register* at 49 *Fed. Reg.* 34716, 34722-23 (August 31, 1984), and republished in the *Official Gazette* at 1046 *Off. Gaz. Pat. Office* 28, 34 (September 25, 1984). Under the statutes and rules, the Office has no duty to notify patentees of the requirement to pay maintenance fees or to notify patentees when the maintenance fees are

due. It is solely the responsibility of the patentee to assure that the maintenance fee is timely paid to prevent expiration of the patent. The lack of knowledge of the requirement to pay a maintenance fee and the failure to receive the Maintenance Fee Reminder will not shift the burden of monitoring the time for paying a maintenance fee from the patentee to the Office.

Thus, evidence that despite reasonable care on behalf of the patentee and/or the patentee’s agents, and reasonable steps to ensure timely payment, the maintenance fee was unavoidably not paid, could be submitted in support of an argument that the delay in payment was unavoidable. For example, an error in a docketing system could possibly result in a finding that a delay in payment was unavoidable if it were shown that reasonable care was exercised in designing and operating the system and that the patentee took reasonable steps to ensure that the patent was entered into the system to ensure timely payment of the maintenance fees.

>

## II. < UNINTENTIONAL DELAY

Under 35 U.S.C. 41(c)(1), the Director of the Office may accept late payment of any maintenance fee filed within 24 months after the 6-month grace period, if the delay in payment is shown to the satisfaction of the Director of the Office to have been unintentional. See MPEP § 711.03(c) for a general discussion of the “unintentional” delay standard.

In addition to the timeliness deadline set forth in the preceding paragraph, a petition filed under the unintentional standard of 37 CFR 1.378(c) must include:

- (A) the required maintenance fee set forth in 37 CFR 1.20 (e) through (g);
- (B) the surcharge for an unintentionally expired patent as set forth in 37 CFR 1.20(i)(2); and
- (C) a statement that the delay in payment of the maintenance fee was unintentional.

A person seeking reinstatement of an expired patent should not make a statement that the delay in payment of the maintenance fee was unintentional unless the entire delay was unintentional, including the period from discovery that the maintenance fee was not timely paid until payment of the maintenance fee. For example, a statement that the delay in payment of the maintenance fee was unintentional would not be

proper when the patentee becomes aware of an unintentional failure to timely pay the maintenance fee and then intentionally delays filing a petition for reinstatement of the patent under 37 CFR 1.378.

### **2591 Intervening Rights in Reinstated Patents**

Intervening rights in reinstated patents are provided by 35 U.S.C. 41(c)(2) which is reproduced in MPEP § 2501. No patent, the term of which has been maintained as a result of the acceptance of a late payment of a maintenance fee, shall abridge or affect the right of any person or his or her successors in business who made, purchased, imported, or used after the 6-month grace period but prior to the acceptance of the late maintenance fee anything protected by the patent, to continue the use or importation of, or to sell to others to be used or sold, the specific things made, purchased, imported, or used. A court before which such matter is in question may provide for the continued manufacture, use, importation, or sale of the thing made, purchased, imported, or used as specified, or for the manufacture, use, importation, or sale of which substantial preparation was made after the 6-month

grace period but before the acceptance of the late maintenance fee, and it may also provide for the continued practice of any process, practiced, or for the practice of which substantial preparation was made, after the 6-month grace period but prior to the acceptance of the late maintenance fee, to the extent and under such terms as the court deems equitable for the protection of investments made or business commenced after the 6-month grace period but before the acceptance of the late maintenance fee.

### **2595 Forms [R-5]**

The following forms are suggested when submitting a maintenance fee or establishing a fee address for maintenance fee purposes. "Maintenance Fee Transmittal Form," Form PTO/SB 45; and "Fee Address' Indication Form," Form PTO/SB/47.

>Form PTO/SB/125 ("Request for Customer Number") may be used to request a customer number. Form PTO/SB/66 ("Petition to Accept Unintentionally Delay Payment of Maintenance Fee in an Expired Patent (37 CFR 1.378(c))") may be used to file a petition under 37 CFR 1.378(c).<

Exhibit B

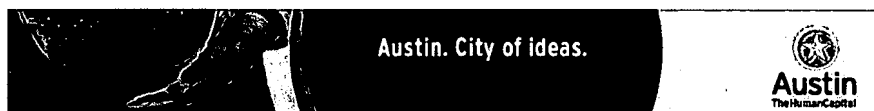
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Patent Bibliographic Data		03/12/2008 02:54 PM	
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Issue Date:	08/06/2002	Filing Date:	04/14/2000
Title:	HEALTH CARE KIOSK WITH HANDICAPPED ACCESSIBLE SEAT		
Status:	Expired for non-payment on: 08/06/2006		Entity: Large
Window Opens:	08/08/2005	Surcharge Date:	02/07/2006
Expiration:	08/06/2006		
Fee Amt Due:	\$0.00	Surchg Amt Due:	\$0.00
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Most recent events (up to 7):	08/07/2006 Patent Expired for Failure to Pay Maintenance Fees. 02/22/2006 Maintenance Fee Reminder Mailed. --- End of Maintenance History ---		
Address for fee purposes:	CHARLES BLUTH COMPUTERIZED SCREENING, INC. 135 GREG STREET SPARKS, NV 89431		
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Exhibit C



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**Skjerven Morrill LLP** says its partners have voted to dissolve the intellectual property firm after merger talks fell through.

With offices in San Jose and San Francisco, Skjerven Morrill employs 62 attorneys and 152 staff. The law firm's partners decided the firm could not continue because of "the cumulative effect of the continuing downturn in the general and technology economies, as well as the major structural changes in the firm's organization and geographic base and continuing declines in attorney and staff levels, during the past year," according to a statement released by a spokesman.

Skjerven Morrill's planned closing comes just a few days after San Francisco law giant Brobeck Phleger & Harrison LLP, suffering from a steep drop in profits, said it would dissolve its law practice after merger negotiations with an unnamed Philadelphia-based firm broke off. Brobeck continues to wind down and negotiate payments on its debt with its primary bank lender, Citibank.

Skjerven Morrill was in merger talks with Pillsbury Winthrop LLP of San Francisco and Chicago's Sidley Austin Brown & Wood LLP, according to the legal newspaper The Recorder. After both discussions proved fruitless, Skjerven Morrill partners decided to close shop by March 1.

At its peak in the fall of 2002, Skjerven Morrill had 135 attorneys. But as business fell off, the firm closed its offices last April in Austin, Texas, and Newport Beach in Southern California, and at about the same time partner Alan MacPherson left the firm.

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Exhibit D

In The United States Patent And Trademark Office

Patent No.: 6,428,124 Issue Date: August 6, 2002  
Inventor(s): Bluth et al.  
Group Art Unit: 3635 Examiner: Chi Q. Nguyen  
Atty. Docket No.: M-8227 US  
Title: Health Care Kiosk With Handicapped Accessible Seat  
Assignee: Computerized Screening, Inc.

COMMISSIONER FOR PATENTS  
Washington, D.C. 20231

**CHANGE OF CORRESPONDENCE ADDRESS**

Sir:

Please direct all correspondence in the above-identified patent to the following address:

Charles Bluth  
Computerized Screening, Inc.  
135 Greg Street  
Sparks, Nevada 89431  
Telephone: (775) 359-1191  
Facsimile: (775) 831-3340

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Commissioner for Patents, Washington, D.C. 20231, on the date listed below.

*K. Alison de Runtz*  
Signature

*April 17, 2003*  
Date of Signature

Respectfully submitted,

*K. Alison de Runtz*  
K. Alison de Runtz  
Registration No: 37,119

LAW OFFICES OF  
SKJERVEN MORRILL  
LLP

25 METRO DRIVE  
SUITE 700  
SAN JOSE CA 95110  
(408) 453-9200  
FAX (408) 894-1008



3 Embarcadero Center  
Suite 2800

San Francisco  
California 94111

T: 415-217-6000  
F: 415-434-0646

Exhibit E  
skjerven morrill LLP

July 29, 2002

Charles Bluth  
Computerized Screening, Inc.  
1395 Greg Street  
Suite 102  
Sparks, NV 89431

Re: United States Patent Application entitled "Health Care Kiosk With Handicapped Accessible Seat"  
Serial No.: 09/549,972  
Filing Date: April 14, 2000  
Inventors: Charles Bluth, James Bluth, Raymond G. Bryan, Jim C. Lovell  
Our Reference: M-8227 US

Dear Charles:

Enclosed please find a copy of a notice which we received from the U.S. Patent and Trademark Office informing us that the above-referenced patent application has been assigned a Patent Number and Issue Date as indicated below:

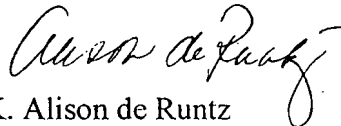
Patent No: **6,428,124**

Issue Date: **August 6, 2002.**

We will send you the original Letters Patent when we receive it. You should now take steps to mark any product covered by this patent or made using a process of this patent with this patent number.

Please call me if you have any questions on the above.

Very truly yours,



K. Alison de Runtz

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